

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

RME Illinois, L.L.C.)	
)	
Petition for Issuance of Certificate of Public)	
Convenience and Necessity to Provide Onsite)	Docket No. 07-0331
Wastewater, Collection and Dispersal Services)	
to a Parcel in Lake Villa, Lake County, Illinois)	
Pursuant to Section 8-406)	
of the Illinois Public Utilities Act.)	
 RME Illinois, L.L.C.)	
)	
Petition for Issuance of Certificate of Public)	
Convenience and Necessity to Provide Onsite)	Docket No. 07-0332
Wastewater, Collection and Dispersal Services)	
to a Parcel in Long Grove, Lake County, Illinois)	
Pursuant to Section 8-406)	(Cons.)
of the Illinois Public Utilities Act.)	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S RESPONSE TO MOTION
FOR LEAVE TO HOLD ADDITIONAL HEARINGS TO FILE POST RECORD DATA**

NOW COME the Staff Witnesses of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190 of the Rules of Practice (83 Ill. Adm. Code 200.190), hereby files this Response to Motion for Leave to Hold Additional Hearings to File Post Record Data ("Motion") filed by RME Illinois, LLC ("RME" or "Petitioner"). For its Response to the Motion for Leave to Hold Additional Hearings to File Post Record Data ("Response"), Staff states as follows:

1. On May 23, 2007, RME filed Petitions for Certificates of Public Convenience and Necessity ("Certificates"), pursuant to Section 8-406 of the Illinois Public Utilities Act ("Act") (220 ILCS 5/8-406), authorizing RME to provide Onsite Wastewater, Collection

and Dispersal Services ("Wastewater services") to certain parcels located in Lake Villa, Lake County, and Long Grove, Lake County, Illinois.

2. A ruling by the Administrative Law Judge ("ALJ") on December 10, 2007 consolidated these two dockets.

3. On February 21, 2008, an evidentiary hearing was held at the Illinois Commerce Commission's ("Commission") Chicago offices. At the conclusion of the hearing, the record was marked "HEARD AND TAKEN."

4. On April 28, 2008, the ALJ filed his Administrative Law Judge's Proposed Order ("ALJPO") in this docket. Exceptions and Replies to Exceptions were to be filed on May 12, 2008 and May 19, 2008, respectively.

5. On May 6, 2008, RME filed its Motion which is the subject of this Response.

6. RME listed several sections of the Commission's Rules of Practice (83 Ill. Adm. Code Part 200) in support of its Motion. RME specifically relies upon two sections of the Rules of Practice, Section 200.870, entitled Additional Hearings, and Section 200.875, entitled Post-Record Data. RME has failed to show it has met the standard required in either of these Sections for an additional hearing or to provide post-record data.

7. Section 200.870 of the Commission's Rules of Practice provides:

After the record in a proceeding has been marked "heard and taken" but before issuance of a final order by the Commission, the Hearing Examiner may, on application by staff or any party, on his or her own motion or when directed by the Commission, hold additional hearings. Such application shall state the reasons therefor, **including material changes of fact or of law**, and shall contain a brief statement of proposed additional evidence **and an explanation why such evidence was not previously adduced**. Unless directed by the Commission, the holding of additional hearings under this Section shall be subject to the prior approval of the Chief Hearing Examiner. (Emphasis added)

RME's Motion is completely devoid of any cites to material changes of fact or law and fails to explain why that evidence was not previously adduced at the evidentiary hearing.

8. Section 200.875 of the Commission's Rules of Practice provides, in relevant part:

After the record in a proceeding (other than a rulemaking) has been marked "heard and taken" but before issuance of a final order by the Commission, the **Hearing Examiner may, on his or her own motion or when directed by the Commission**, direct any or all of the parties to a case to provide, by a deadline to be set by the Examiner, calculations and other numerical analyses of data that are **related to evidence already in the record or the rate levels or rate structures being considered by the Commission** and where, in the judgment of either the Examiner or the Commission, such calculations and analyses are necessary for the Commission to determine final rate levels or rate structures in the case. ... (Emphasis added.)

This Section of the Rules of Practice provides that only the Hearing Examiner, on his or her own motion or when directed by the Commission, can direct the parties to provide calculations and numerical analyses of data that are related to evidence already in the record or rate levels being considered by the Commission. RME cannot precipitate such a Motion on its own.

9. In paragraph 4 of its Motion, RME refers to 3 rate cases relied upon by the ALJ in the ALJPO and attempts to analyze the Final Orders in these dockets. The referenced Orders and dockets are not new decisions and were available to the Petitioner prior to issuance of the ALJPO. If RME felt these Orders helped prove its case for its Petitions for Certificates, it should have presented these Orders and arguments in its Briefs. Now is not the proper time to examine the rate cases cited by the ALJ to make previously existing arguments. RME is attempting to shift the focus from the statutory elements necessary to obtain an additional hearing to one of an analysis of prior decided rate cases. This is misleading.

10. In paragraph 5 of its Motion, RME seems to take issue with the level of investment required in the wastewater systems for the Falcon Crest subdivision and Eastgate Estates subdivision. Staff Witness William D. Marr provided direct testimony regarding the level of investment required in the wastewater systems and the rationale for those levels. (ICC Staff Exhibit 1.0, pp. 11-13) RME agreed with Staff witness Marr's recommendation for the amount of RME's investments in the wastewater systems for Falcon Crest subdivision and Eastgate Estates. (RME Exhibit RB-1, p. 2)

11. In paragraph 6 of its Motion, RME indicates that the methodology used in the Hawthorn Woods rate case, when applied to his Docket, would produce dramatically lower customer rates. RME then improperly attempts to introduce into evidence information regarding what developers would be willing to accept that is not part of the record in this proceeding. This information should have been available for introduction into evidence when Direct and Rebuttal Testimony were filed by the Petitioner.

12. Further, RME never presented any evidence as to what rates it should charge to potential customers of Eastgate Estates or Falcon Crest subdivisions. In fact, the record reflects that RME agreed with Staff that the rates for monthly service for Falcon Crest customers should be \$166.56 and for Eastgate Estates customers should be \$263.19. (RME Exhibit RB-1, p. 3) The references to new wastewater rates and the attachments to the Motion supporting such rates are entirely inappropriate as these are not a part of the record in this docket.

13. Finally, in paragraph 7 of its Motion, RME states that "The information contained in this motion is directly responsive to questions raised at the hearing. RME and Staff believe that the inclusion of this information in the record will serve to assist the

Commission in making a well-informed decision in this case, based on a full and complete record.” The record is lacking of any questions left pending by the ALJ at the evidentiary hearing. Further, RME does not have authority to speak on behalf of what Staff believes regarding information that is not part of the record in this docket.

WHEREFORE, for the foregoing reasons, Staff respectfully requests that RME’s Motion for Leave to Hold Additional Hearings to File Post Record Data be denied.

Respectfully submitted,



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May 22, 2008

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